

## **REMARKS/ARGUMENTS**

### **REMARKS/ARGUMENTS**

Claims 1-5, 8-16 and 18-20 are currently pending. The *cover sheet* of the Office Action provides that claims 1-20 stand rejected. However, the September 9, 2005 Official Action indicated that claims 18-20 were allowed. Inasmuch as those claims have not been subsequently modified, and inasmuch as the current Office Action does not discuss claims 18-20, Applicants presume that claims 18-20 stand allowed. Clarification is respectfully requested.

By this amendment, claims 3 and 4 are cancelled without prejudice to filing a continuation application and claims 1, 8-10, and 13 are amended.

### **Applicant's Invention**

The instant invention relates to food preportioning bags. In at least one embodiment seven bags are provided with day identification indicia printed thereon in multiple languages. In addition, the bags are color-coded to reflect the day imprinted on the bags, so that the bags may be easily identified for use. The bags are constructed from a material that will withstand freezing, microwave heating and steaming.<sup>1</sup>

### **35 USC §103 Rejection of Claims 1, 6-10, 13, and 17**

Claims 1, 6-10, 13 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over DeMatteis et al., U.S. Patent No. 6,502,371 ("*DeMatteis*") in view of Turner, U.S. Patent No. 3,857,139 ("*Turner*"). Claims 3 and 4 are cancelled without prejudice, claims 6, 7 and 17 were previously rejected and claims 1, 8-10 and 13 are amended. Applicant traverses this rejection with respect to claims 1, 8-10 and 13 and respectfully submits that the pending claims are allowable.

### **DeMatteis/Turner do not disclose the features as suggested in the Office Action**

The Office Action provides that *DeMatteis* "teaches a bag comprising a front wall (not shown), rear wall (not shown), ventilation slits 22."<sup>2</sup> Applicant respectfully disagrees and submits that *DeMatteis* does not teach the suggested features.

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<sup>1</sup> See, for example, Specification, pg. 2, lines 18-22 and pg. 3, lines 1-6.

<sup>2</sup> Office Action, pg. 2, ¶3, lines 1-2.

Claim 1 as amended recites “[a] preportioning bag used in food operations where a bulk food supply is divided into portions of smaller size ...” with “at least one vent formed in said main body ... said at least said one vent permitting heat to escape when a food portion is heated in the bag” among other features, while claim 13 as amended recites “a plurality of preportioning bags, each bag including ...at least one vent formed in said main body ... with said at least one vent permitting heat to escape when a food portion is heated in the bag” among other features.

*DeMatteis* does not disclose a preportioning bag used in food operations having at least one vent, where the vent permits heat to escape when the food portion is heated in the bag, among other features. Rather, Applicant submits that *DeMatteis* discloses a method for effecting the self-opening ability of plastic bags.<sup>3</sup> The vents are used to assist in such self-opening effect and “to cause the bag body to blouse wide open when dispensed...”<sup>4</sup> *DeMatteis* does not disclose, or otherwise suggest, heating the food portion in the bag or using the vents to allow heat to escape as the food portion is heated as claimed. Furthermore, *DeMatteis* teaches away from the claimed feature of clause “e” of claim 1 and clause 1v of claim 13 reciting “a closure for the open top of the bag.”

*DeMatteis* uses its vents to prop open its bag. The instant bag recites a closure feature separate from its hot-air venting feature.

**DeMatteis/Turner do not disclose all the claimed features**

Assuming *arguendo* that *DeMatteis* does disclose the vents as provided in the Office Action, Applicant submits that *DeMatteis*, alone or in combination with *Turner*, does not teach all the features of the claimed invention.

Claims 3 and 4 are cancelled, and the features thereof are incorporated into claims 1 and 13. Amended independent claims 1 and 13 now recite “at least one vent formed in said main body, **said at least one vent comprising at least one semi-**

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<sup>3</sup> See for example *DeMatteis*, col. 1, lines 32-36.

<sup>4</sup> See for example *DeMatteis*, col. 3, lines 38-40, and col. 4, lines 33-34.

**circular slit**” among other features. Support for this amendment may be found in the specification.<sup>5</sup>

It is well understood that to establish a case of *prima facie* obviousness, the prior art must teach or suggest all of the claim limitations.<sup>6</sup> Claims 1 and 13 now recite “at least one vent formed in said main body, said at least one vent comprising at least one semi-circular slit” among other features as provided previously. Neither *DeMatteis* nor *Turner*, alone or in combination, disclose all the claimed features as provided above. Applicant respectfully submits that claims 1 and 13 are therefore allowable.

**DeMatteis/Turner are not combinable as suggested**

Applicant further submits that, the fact that the references can be combined does not make such combination obvious, unless the combination is taught or suggested by the prior art.<sup>7</sup> It appears that the Office Action does not provide any clear motivation for the suggested combination.

A careful review of the Office Action does not appear to provide any clear motivation for the suggested combination. The only statement set forth in the Office Action regarding the combination is that “[i]t would have been obvious to one having ordinary skill in the art to construct the bag taught by *DeMatteis* with color codes as taught by *Turner* to provide a means to indicate particular day of the week.”<sup>8</sup> Applicant suggests that this is merely a restatement of the suggested combination, and not a reason for making the combination. As the Office Action does not provide a clear motivation for making the suggested combination, Applicant submits the combination is improper.

**Permissible combination is different from that suggested by the Office Action**

Assuming *arguendo* that *DeMatteis* and *Turner* are combinable, Applicant respectfully submits that such combination would not teach the features suggested in the Office Action.

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<sup>5</sup> Specification, pg. 4, lines 5-13, claims 3 and 4 as filed and the figures.

<sup>6</sup> See MPEP §2143.03 and *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

<sup>7</sup> See MPEP §2143.01 and *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990)

<sup>8</sup> Office Action, pg. 2, ¶3, lines 4-6.

*DeMatteis* discloses a method for effecting the self-opening ability of plastic bags using vents to assist in such self-opening effect as provided previously. Turner discloses "color-coded day of the week indicia with a closure twist tie 14 for the open top of the bag."<sup>9</sup> Applicant submits that a permissible combination of *DeMatteis* and *Turner* would teach a self-opening plastic bag with day of the week indicia and adapted to be closed using a closure twist tie. The combination would not teach heating the contents of the bag or using the vents to allow heat to escape as the food portion is heated as claimed.

Claims 8-10 depend, directly or indirectly, from amended claim 1 and include all of the limitations thereof. The rejection of claims 8-10 is overcome for all the reasons provided above with respect to claim 1.

**35 USC §103 Rejection of Claim 16**

Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Huseman, U.S. Patent No. 6,718,728 ("*Huseman*") in view of Wilfong, Jr. et al., U.S. Patent No. 6,286,681 ("*Wilfong*"). In light of the foregoing discussion and amendment related to claim 13, Applicant respectfully submits that this rejection is now obviated.

Separately, Applicant traverses this rejection and respectfully submits that the pending claim is allowable.

**The Office Action is silent as to what *Huseman/Wilfong* teaches**

The Office Action does not indicate what the combination of *Huseman* and *Wilfong* teaches. The Office Action merely states that, with respect to claim 16, "[i]t would have been obvious to one having ordinary skill in the art the time this invention was made to construct the bag taught by Huseman made of High Molecular Weight-High Density Polyethylene to provide a bag with superior stiffness, cost, and processability."<sup>10</sup> Nonetheless, Applicant respectfully submits that neither *Huseman* nor *Wilfong*, alone or in combination, teach the claimed invention.

Claim 16 depends from claim 13, incorporates all of the features thereof, and claims additional features thereto. Claim 16 recites "a plurality of preportioning bags,

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<sup>9</sup> Office Action, pg. 2, ¶3, lines 7-8.

each bag including ... at least one vent formed in said main body, said at least one vent comprising at least one semi-circular slit ... with said at least one vent permitting heat to escape when a food portion is heated in the bag” among other features.

Applicants submit that *Huseman* discloses plastic film bags for storing foods (grapes for example).<sup>11</sup> This disclosed film bag includes a plurality of air holes allowing airflow. Similarly, *Wilfong* teaches a vented plastic bag for carrying hot food from restaurants.<sup>12</sup> The disclosed plastic bag includes closely spaced micro-perforations. Neither *Huseman* nor *Wilfong* disclose a proportion bag used in food operations having at least one vent comprising at least one semi-circular slit, where the vent permits heat to escape when the food portion is heated in the bag, among other features. Rather, Applicant submits that *Huseman* and *Wilfong* discloses storage bags that allow air flow.

**Huseman/Wilfong do not disclose all the claimed features**

Assuming arguendo that either *Huseman* or *Wilfong* disclose vents, *Huseman*, alone or in combination with *Wilfong*, does not teach all the features of the claimed invention.

Claim 16 depends from claim 13. Claims 3 and 4 are cancelled, and the features thereof are incorporated into claim 13. Claim 16 now recites “at least one vent formed in said main body, said at least one vent comprising at least one semi-circular slit” among other features.

As provided previously, the prior art must teach or suggest all of the claim limitations to establish a case of *prima facie* obviousness. *Huseman* teaches “a plurality of air holes”<sup>13</sup> while *Wilfong* teaches “closely spaced micro-perforations.”<sup>14</sup> Neither reference discloses “at least one vent formed in said main body, said at least one vent comprising at least one semi-circular slit” as recited by claim 16, among other features. Applicant respectfully submits that claim 16 is therefore allowable.

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<sup>10</sup> Office Action, pg. 3, ¶4, lines 2-5.

<sup>11</sup> See for example *Huseman*, col. 1, lines 6-30, col. 7, lines 13-18 and the figures 4-6.

<sup>12</sup> See for example *Wilfong*, Abstract, col. 2, lines 23-26, and the figures.

<sup>13</sup> *Huseman*, col. 7, lines 16-18 and the figures.

<sup>14</sup> *Wilfong*, col. 6, lines 21-25 and the figures.

**Huseman /Wilfong are not combinable as suggested**

Applicant again submits that, the fact that the references can be combined does not make such combination obvious, unless the combination is taught or suggested by the prior art. It appears that the Office Action does not provide any clear motivation for the suggested combination.

A careful review of the Office Action does not appear to provide any clear motivation for the suggested combination. The only statement set forth in the Office Action regarding the combination is that “[i]t would have been obvious to one having ordinary skill in the art the time this invention was made to construct the bag taught by Huseman made of High Molecular Weight-High Density Polyethylene to provide a bag with superior stiffness, cost, and processability.”<sup>15</sup> Applicant submits that the Office Action has failed to identify anything in either *Huseman* or *Wilfong* that would suggest the combination, rather suggesting it would be desirable. As the Office Action does not provide a clear motivation for making the suggested combination, Applicant submits the combination is improper.

**Permissible combination is different from that taught by the Office Action**

Assuming *arguendo* that *Huseman* and *Wilfong* are combinable, Applicant respectfully submits that such combination would not teach the present invention.

*Huseman* discloses plastic film bags for storing foods (grapes for example), the film bags including a plurality of air holes allowing airflow. *Wilfong* teaches “high density polyethylene.”<sup>16</sup> Applicant submits that a permissible combination of *Huseman* and *Wilfong* would teach plastic film bags made of high density polyethylene used for storing food, the film bags including a plurality of air holes allowing airflow. The combination would not teach heating the contents of the bag or using the vents to allow heat to escape as the food portion is heated.

**Office Action is silent with respect to the remaining claims**

The Office Action is silent with respect to claims 2, 5, 11, 12, 14, 15, and 18-20. Applicant submits that these claims are allowable for all the reasons provided above.

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<sup>15</sup> Office Action, pg. 3, lines 2-5.

An earnest attempt has been made hereby to respond to the June 9, 2006 Official Action. Applicant submits that the application is hereby allowable. Accordingly, Applicant respectfully requests that the Examiner issue a Notice of Allowance in this application. If the Examiner disagrees or has any questions regarding this submission, Applicant requests that the Examiner telephone the undersigned at the number provided. Claims 1, 2, 5, 8-16, and 18-20 are pending.

Respectfully submitted,

**CHERSKOV & FLAYNIK**

A handwritten signature in black ink, appearing to read "Michael J. Cherskov", is written over a horizontal line.

Michael J. Cherskov  
Reg. No. 33,664

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<sup>16</sup> *Wilfong*, col. 5, line 7.